

Titling of Assets



Five facts which most people do not know about how an asset is titled:

1. By itself it will not save inheritance or estate taxes.
2. It does not usually reduce estate administration costs if there are other assets subject to probate.
3. It can subject assets to claims against other joint owners.
4. It can reduce the liquidity of an estate or trust holding other assets and force the sale of such assets to pay debts and charges.
5. It can frustrate or defeat an estate plan if done improperly.

Probate vs. Nonprobate Property

It's important to review the definitions of **Probate vs. Nonprobate Property**.

Probate Property is property which passes according to the provisions of your will or, if you don't have a will, according to state intestacy laws.

Basically, everything you own individually in your name will pass as probate property. Additionally, if you own property as a Tenant in Common with others, your share will pass as probate property.

Nonprobate Property, on the other hand, passes without regard to the provisions of your will. *It is not covered or controlled by your will.*

Types of nonprobate property include:

- Property you own in Joint Tenancy with Rights of Survivorship
- Property that passes via Beneficiary Designation (Life Insurance, Annuities, IRAs, 401k, 403b . . .)
- Property that passes via Payable on Death/Transfer on Death (POD/TOD)
- Property owned by Revocable Living Trusts

For many people, the bulk of their wealth will pass as Nonprobate Property, outside their will. Thus, review of what is owned jointly, how beneficiary designations are written, how POD/TOD is used and what is owned or not owned by a Revocable Living Trust is critical.

Nonprobate Property definitions and warnings to be aware of as you consider how to title your assets:

Joint Tenancy with Rights of Survivorship

What is it?

Property ownership by multiple people with unified and undivided interest. At the death of a co-tenant, the property passes to the surviving tenants. Bypasses probate.

Warnings!

- Be careful adding children as joint tenants to property as this could effectively disinherit children who aren't joint tenants.
- The joint tenant has immediate access to the asset. Thus the asset is exposed to your child's creditors or potential liability – judgments, child support, divorce, bankruptcy.
- Adding a spouse as a joint tenant overrules a prenuptial agreement with respect to that asset.
- This type of ownership does not avoid state inheritance tax or estate tax, or reduce attorney fees under the maximum fee computation.
- If all cash assets pass via joint tenancy (or POD/TOD), your executor may have trouble meeting the financial obligations of your probate estate, including taxes, funeral costs, or specific bequests to charities or others under your will.

[continued]

You Have a Written Estate Plan . . . Is That Enough?

Ask yourself a few questions:

- Do you have a written estate plan, for example, a will or a trust?
- Did you carefully review how your assets were titled at the time you completed this estate plan?
- Have you bought new assets, opened new accounts, purchased additional life insurance or annuities, set up new IRAs, or changed jobs **since the time you completed the estate plan?**
- *Did you review the titling again?*

Some Wealth Management Issues are only relevant to certain situations.

Titling of Assets, however, impacts *all* of us — regardless of age, size of estate or net worth. We all have property that we want to pass to someone.

Many people spend significant time and money on a will or trust thinking that the end document will pass that property.

Titling of Assets is **key** to making sure that the intent you have set out in your will or trust will actually be realized.

If you *don't* act to title your assets, the state or a contract will. If you *do* act, you want to make sure you don't inadvertently disrupt your estate plan.

Beneficiary Designation

What is it?

A contractual provision which passes property to designated recipients. Often the contract will have a default provision if you don't designate. Examples include Life Insurance, Annuities, IRAs, and Qualified Retirement Plans. Bypasses probate.

Warnings!

- Will not bypass probate if beneficiary is "the estate".
- Can frustrate estate plan – e.g., if your will says property should go into trust for your minor children, but you have listed your minor children individually on beneficiary designations, the designated property will not go into trust. Moreover, a conservatorship will have to be set up until the children reach the age of majority.
- Need to consider contingent/alternate beneficiaries – if you don't and a beneficiary dies before you, the default in the contract will control. The default may not be what you would want to have happen.

Pay on Death/Transfer on Death

What is it?

Used for some bank accounts, CDs, investment accounts which otherwise do not have beneficiary designations. A technique some have used to increase FDIC coverage.

Warnings!

- If you don't carefully monitor who will receive what via POD/TOD, you could frustrate your estate plan, e.g. intent to treat children equally or an intent to have a child's share pass to grandchildren.
- This type of ownership does not avoid state inheritance tax or estate tax, or reduce attorney fees under the maximum fee computation.
- If all cash assets pass via POD/TOD (or joint tenancy), your executor may have trouble meeting the financial obligations of your probate estate, including taxes, funeral costs, or specific bequests to charities or others under your will.
- Be wary of advisors who give you advice on POD/TOD without knowing how this will impact your overall estate plan!

Revocable Living Trust Property

What is it?

Property legally titled in the name of a living trust belongs to the trust and passes outside of property pursuant to the terms of the trust.

Warnings!

- Many people establish these trusts with the hope of avoiding or minimizing probate. They then neglect to retitle their assets in the name of the trust.
- Without property being titled in the name of the trust, the expected benefits will not be realized.

There is no "best" way to title your assets. All of the probate and nonprobate techniques listed above can be appropriate.

What is important is that you understand what techniques you are using and make sure they are working together consistently to accomplish your plans for passing your property.

First American Wealth Management Group has Wealth Advisors who would be happy to sit down with you to review your titling and help you evaluate whether adjustments are appropriate. Give us a call today.

NOT
FDIC
INSURED | No bank guarantee
May lose value